Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of	)	
GTE CORPORATION,	)	
Transferor,	)	
and	)	**CC Docket No. 98-184**
BELL ATLANTIC CORP.,	)	
Transferee,	)	
For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and to Application to Transfer Control of a Submarine Cable Landing License	)	

OPPOSITION OF THE ASSOCIATION OF COMMUNICATIONS ENTERPRISES

The Association of Communications Enterprises ("ASCENT"), through undersigned counsel and pursuant to *Public Notice*, DA 01-1790 (released August 1, 2001) ("*Public Notice*"), hereby opposes the request of Verizon Communications, Inc. ("Verizon") for removal of Pennsylvania from the Carrier-to-Carrier Performance Plan to which the carrier agreed in order to secure Commission approval of Bell Atlantic Corporation's ("Bell Atlantic") merger with GTE Corporation ("GTE"). According to Verizon, removal of not only Pennsylvania, but Ohio and Illinois, from the federal Carrier-to-Carrier Performance Plan is warranted because each of the Pennsylvania Public Utility Commission ("PAPUC"), the Ohio Public Utility Commission ("OPUC"), and the Illinois Commerce Commission ("ICC") has adopted performance assurance plans ("PAP") which the carrier opines are "comprehensive." ASCENT disagrees at least with

respect to the Pennsylvania PAP ("PAPAP").

The Commission's assessment of the proposed merger of Bell Atlantic and GTE was that absent the various mitigating conditions proposed by the merging entities, the combination would hinder realization of the Congressional vision of a competitive local telephone market embodied in the Telecommunications Act of 1996.[1] As explained by the Commission, the merger would "remov[e] one of the most significant potential participants in local telecommunications mass markets both within and outside of each . . . [of Bell Atlantic's and GTE's] region[s]," "eliminate an independent source for effective, minimally-intrusive comparative practices analyses among the few remaining major incumbent LECs as the Commission implements and enforces the 1996 Act's market-opening requirements," and "increas[e] the incentive and ability of the merged entity to discriminate against rivals, particularly with respect to advanced services."[2] Moreover, the Commission found that the "few tangible merger-specific public interest benefits" associated with the merger would be "insufficient to outweigh" these "significant public interest harms."[3] Accordingly, the Commission declared, "if our analysis ended at this point, we would have to conclude that the Applicants have not demonstrated that the proposed transaction, on balance, . . . [would] serve the public interest, convenience and necessity."[4]

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[1] Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License (Memorandum Opinion and Order), 15 FCC Rcd. 14032, ¶ 96 (2000)

[2] Id. at ¶ 246.

[3] Id.

[4] Id.

The Commission, however, sanctioned the merger of Bell Atlantic and GTE in light of "a package of voluntary commitments" to which the carriers agreed to be bound.[5] These commitments, the Commission found, "alter[ed] the public interest balance of the proposed merger by mitigating substantially the potential public interest harms while providing additional public interest benefit." A key element of the afore-referenced "package of voluntary commitments" was the "Carrier-to-Carrier Performance Plan" Verizon seeks to avoid in Pennsylvania, Ohio and Illinois. As described by the Commission, the federal Carrier-to-Carrier Performance Plan was "a means of ensuring that Bell Atlantic/GTE's service to telecommunications carriers . . . [did] not deteriorate as a result of the merger and the larger firm's increased incentive and ability to discriminate, and to stimulate the merged entity to adopt 'best practices' that clearly favor public rather than private interests."[6] As such, the plan was "intended to offset or prevent some of the merger's potential harmful effects."[7]

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5 Id. at ¶ 247.

6 Id. at ¶ 279.

7 Id. at ¶ 282.

The Commission did provide that Verizon's obligations under the carrier-to-carrier performance plan might "cease to be effective" in any state in with the state commission had adopted "a comprehensive performance plan applicable to Bell Atlantic/GTE."[8] The determination of whether a given "state-approved performance plan . . . [was] comprehensive" was reserved to the Common Carrier Bureau Chief.[9] "A state approved performance plan may be determined not to be 'comprehensive' if, for example, it omits a particular measurement or category of measurements deemed important by the Common Carrier Bureau Chief."[10] Moreover, the Common Carrier Bureau Chief is authorized to "retain part of the reporting and penalty obligations associated . . . where a state-approved mechanism is determined not to be comprehensive."[11]

Against this backdrop, Verizon's effort to avoid in Pennsylvania the obligations to which it committed itself to secure approval of the Bell Atlantic/GTE merger must be rejected. The most compelling grounds for such action are the myriad flaws in the PAPAP identified in the record compiled in the Commission's ongoing review of Verizon's application for authority to originate interLATA traffic in Pennsylvania. As revealed in the record in CC Docket No. 01-138, the PAPAP omits measures critical to the detection of discrimination, most notably measures addressing flow-through rates, line splitting and the timeliness of billing completion notices.[12] The record further reveals that the measures incorporated into the PAPAP have often proven ineffective in capturing

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[8] Id.

[9] Id.

[10] Id. at ¶ 282, fn. 657.

[11] Id.

[12] *See, e.g.,* CC Docket No. 01-138 Comments of AT&T at 56 - 58, and WorldCom at 10 - 11; and Reply Comments of AT&T at 40 - 41.

deficiencies in Verizon's performance or in deterring discriminatory.[13] Thus, for example, the record is replete with showings of fundamental flaws in Verizon's billing, so much so that two

[13] *See, e.g.,* CC Docket No. 01-138 Comments of AT&T at 58 - 59, and WorldCom at 11 - 12; and Reply Comments WorldCom at 6.

commissioners cited billing problems in refusing to support Verizon's application,[14] yet the performance measures suggest exemplary billing performance by the carrier.[15]

The U.S. Department of Justice (the "Department") joined other commenters in expressing concern regarding "the lack of effective billing metrics" in the PAPAP.[16] The Department, however, also identified a number of "structural defects" which undermined the effectiveness of the PAPAP. Specifically, the Department noted that the PAPAP:

- "does not appear to align Verizon's incentives to perform in a nondiscriminatory fashion with the amount of competitive harm that could be caused by discriminatory performance;"
- does not provide for remedy payments which are sufficient "to deter discriminatory conduct;"
- "does not contain any provision to allow the PAPUC flexibly to shift potential payments to areas in which there are particular performance concerns;" and
- "evaluates discrimination for most metrics only on a CLEC-specific basis" and thus may "fail to detect widespread discrimination."[17]

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[14] Dissenting Statement of Commissioner Nora Mead Brownell issued in PAPUC Docket No. M-00001435 on June, 2001; Statement of Commissioner Terrance J. Fitzpatrick Concurring in Part and Dissenting in Part issued in PAPUC Docket No. M-00001435 on June, 200.

[15] *See, e.g.,* CC Docket No. 01-138 Comments of WorldCom at 11 - 12.

[16] CC Docket No. 01-138 Recommendations of the U.S. Department of Justice at 14 - 15.

[17] Id. at 14 - 18.

Other commenters echo and elaborate on the concerns expressed by the Department. The CC Docket No. 01-138 record reveals concerns regarding not only the effectiveness of the penalties associated with the PAPUC,[18] but actions which have been taken and may be taken by Verizon which would further undermine the effectiveness of the PAPUC in deterring anticompetitive conduct. Thus, commenters have registered complaints regarding unilateral and unannounced changes implemented by Verizon in the PAPAP performance metrics, and repeated failures by Verizon to report results under given metrics.[19] Finally, the CC Docket No. 01-138 record confirms that Verizon has reserved to itself the right to challenge on appeal the authority of the PAPUC to impose remedies for its performance failures, leaving in doubt the effectiveness over time of the PAPAP.[20]

In short, a finding that the PAPAP is "a comprehensive performance plan" sufficient to relieve Verizon of its obligations under the Carrier-to-Carrier Performance Plan to which the carrier agreed in order to secure Commission approval of Bell Atlantic's merger with GTE cannot be made. The PAPAP omits key performance measurements, is inadequate in operation to capture discriminatory conduct, is plagued by structural defects not the least of which are inadequate and mistargeted remedies, and is of uncertain duration. As such, it is far from "comprehensive."

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[18] *See, e.g.,* CC Docket No. 01-138 Comments of AT&T at 61 - 63, and WorldCom at 15 - 16.

[19] *See, e.g.,* CC Docket No. 01-138 Comments of AT&T at 60 - 61, and WorldCom at 13 - 14; and Reply Comments of WorldCom at 6 - 7.

[20] *See, e.g.,* CC Docket No. 01-138 Reply Comments of AT&T at 39 - 40.

ASCENT, accordingly, urges the Commission to deny the relief sought by Verizon at least to the extent it applies to the PAPAP.

Respectfully submitted,

ASSOCIATION OF COMMUNICATIONS ENTERPRISES

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